IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 429 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJ.

Versus

MOHMADBHAI JAMALBHAI SODAGAR

Appearance:

MR BD DESAI, APP for Petitioner

MR MB GOHIL for MR CJ VIN for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 18/08/2000

ORAL JUDGEMENT

1. The respondent - accused stood trial before the Ld. Chief Judicial Magistrate, Bharuch in Criminal Case No. 496 of 1988 for the offences punishable u/S. 7 read with section 16 of the Prevention of Food Adulteration

Act (for short 'PFA Act').

2. It was alleged against the accused that original complainant, the Food Inspector, visited his shop in the name and style of M/s. Sodagar Soda Centre at around 1 p.m. on 29/1/1988 and purchased Masala Soda for analysis. After following the procedure under the PFA Act the sample of Masala Soda was sent to Public Analyst, who as per report exhs. 32 and 33 opined that the sample/s did not conform to the prescribed standard under the PFA Rules. That is how the matter went before the Ld. Chief Judicial Magistrate at the behest of the complainant. After recording evidence and hearing the parties Ld. Chief Judicial Magistrate came to the conclusion that the guilt of the accused was not established beyond reasonable doubt in as much as procedure of collecting samples was not followed in accordance with the provisions of the PFA Act and the Rules, provision of rule 22 (A) of the PFA Rules was not complied with and as a result, the examination by the Public Analyst of the sample would have been adversely affected, the Panch witness did not support the prosecution, that the only standard which was found to be not conforming is with regard to contents of sugar/sucrose and that there was a common Panchnama made for the samples of two different articles, namely Masala Soda and Orange Soda. The Ld. Chief Judicial Magistrate also referred to rule 9 (E) in the context of the complainant having not maintained a diary with regard to the procedure followed by him at the time and place of the incident.

3. When this appeal came up for hearing Mr. B.D. Desai, Ld. APP tried to canvass the cause of the prosecution; whereas Mr. M.B. Gohil, learned advocate supported the impugned acquittal. Apart from the fact that the sample in question has not been found to be injurious to human health, the impugned judgment and order of acquittal rendered by the Ld. Chief Judicial Magistrate cannot be faulted for he has upon appreciation of evidence come to the conclusion that the prosecution could not establish the very basis of the charge, namely obtaining of samples in accordance with the provisions of the PFA Act and the Rules. Besides, the Panch witness has also not supported the prosecution. Reappraisal of the evidence under such circumstances would not be just and proper. Hence, in the facts of the case following order is required to be passed.

This acquittal appeal is dismissed.

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PVR.